SUPREME COURT OF THE UNITED STATES.

No. 178.—October Term, 1927.

Gulf Fisheries Company, Appellant, vs. D. B. MacInerney, County Attorney. } Appeal from the District Court of the United States for the Southern District of Texas.

[February 20, 1928.]

Mr. Justice Brandeis delivered the opinion of the Court.

The general statutes of Texas provide that no person shall engage in the business of wholesale dealer in fish without procuring a license from the Game, Fish and Oyster Commissioner; that the licensee shall pay a tax of one dollar for each 1,000 pounds of fish handled by him; and that failure to pay the tax shall constitute a misdemeanor for which the person offending may be punished. Texas Penal Code, 1925, Art. 936.

The Gulf Fisheries Company, a New York corporation engaged in the wholesale fish business at Galveston, Texas, brought this suit against the County Attorney, in the federal court for southern Texas. The bill alleged that, as applied to the plaintiff, the above statute is void, as it lays an impost on imports and burdens foreign and interstate commerce, thus violating the Federal Constitution; that, because the statute is void, plaintiff refused to pay the tax demanded; that, because of its refusal, criminal proceedings are threatened; and that, unless these are enjoined, plaintiff will be subjected to irreparable injury to an amount exceeding $3,000. Both an interlocutory and a final injunction were prayed for. A temporary restraining order issued. An application for the interlocutory injunction was made and heard before three judges under § 266 of the Judicial Code. The defendant moved to dismiss the bill; and also answered. Upon final hearing before the three judges the "temporary injunction" was dissolved; the final in-

junction was denied; and the bill was dismissed. 17 F. (2d) 37
The case is here on direct appeal from the final decree. *Smith*
Wilson, 273 U. S. 388; *Clark* v. *Poor*, 274 U. S. 554.

Here, the only claim made by the Company is that the statu
as applied lays an impost on imports. The County Attorney den
that the fish taxed are imports, insists that even if they a
imports, the tax is valid as a license fee exacted to defray t
cost of inspection; and contends that the imposition is, in a
event, valid, because the fish, before the tax is laid, beco
mingled with the common mass of property in the State and th
lose their character as imports and their exemption from state ta
tion. We have no occasion to enquire whether the fish are impor
Nor need we enquire whether the statute could be sustained as
inspection law. On the facts agreed, the tax is not laid until the f
have lost their alleged distinctive character as imports and ha
become, through processing, handling and sale, a part of the m
of property subject to taxation by the State. The facts are the

The fish are caught in the Gulf of Mexico and are landed,
bulk, by the fishing boats on the wharf of the Galveston Wh
Company. That is the Gulf Fisheries Company's only place
business. And there it has the privileges required for the cond
of its business. It has space for unloading the fish; has s
eral large bins or ice-boxes for storage, handling and re-ice
has space for loading fish on express cars; and has space for
office work incident to the loading, selling and shipping. Af
the fish are unloaded from the vessels, all are weighed and wash
All are immediately re-iced to prevent spoiling. About 75
cent are there beheaded and gutted, 7 to 10 per cent are gut
and gilled with heads on; the remainder are left for sale with
beheading or removing gills or entrails. All, except 15 or 20
cent which are sold to wholesale dealers within the city, are
into barrels, loose with ice, ready for shipment in filling ord
None are placed in cold storage plants. All are shipped from
wharf as fast as they can be re-iced, washed, handled and loa
as above stated. Nearly all are shipped on the day they are
loaded from the boats. Occasionally, some are held in the ice bo
on the wharf for more than forty-eight hours. All are sold
wholesale dealers in quantities of from 50 to 400 pounds. N
are sold to retailers.

The tax is laid, not according to the weight of the fish when landed, but upon the fish sold.[1] All that is sold, has been handled as above stated. None of it has remained in its original condition. None is in an original package, and little in its original form. This is obviously true of the 75 per cent which is beheaded and gutted and of the 7 to 10 per cent more which is gutted and gilled with the heads on. But the small remainder is, when sold, no longer in its original condition. Before sale, it is washed and re-iced. It is taken from the bulk and put loose with ice in barrels. And all this has been done on the wharf. These facts make inapplicable cases like *Brown* v. *Maryland*, 12 Wheat. 419; *Low* v. *Austin*, 13 Wall. 29; *Cook* v. *Pennsylvania*, 97 U. S. 566. All the fish sold have, after landing and before laying the tax, been so acted upon as to become part of the common property of the State. They have lost their distinctive character as imports and have become taxable by the State. Compare *Sonneborn Bros.* v. *Cureton*, 262 U. S. 506.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[1]Compare Adams Fish Market v. Sterrett, 106 Tex. 562, 563-4; Texas Revised Civil Statutes (1911) Art. 3987; Texas Penal Code (1911) Art. 917; Texas General Laws, 1913, c. 135, p. 272 (Art. 917), c. 146, p. 299 (Art. 3987); Texas General Laws, 1919, c. 73, Art. 16; Texas General Laws, 1925, c. 178, p. 439 (Art. 16).